

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)

No. D-3457

L-36521

Jeffrey Moran, M.D.
Certificate # A-33867

Respondent.)

NOTICE OF NON-ADOPTION
OF PROPOSED DECISION

NOTICE TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, _____
314 West First Street, Los Angeles, CA 90012

After the transcript has been prepared, the Division will send you notice of the deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on the following:

Why the penalty should not be increased

In addition to written argument, oral argument may be scheduled if any party files with the Division, within 20 days from the date of this notice, a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place of hearing.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality
BMQA
1430 Howe Avenue
Sacramento, CA 95825
(916) 920-6363

Dated: February 3, 1987

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE

By

Vernon A. Leeper

VERNON A. LEEPER, Chief of Enforcement

BEFORE THE DIVISION OF MEDICAL QUALITY

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In the Matter of the
Accusation Against:

Jeffrey Moran, M.D.
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Respondent.


NO. D-3457

ORDER DELAYING DECISION

Pursuant to section 11517 (d) of the Government Code, the Division of Medical Quality, finding that a further delay is required by special circumstances, hereby issues this Order Delaying the Decision for no more than 30 days from January 23, 1987 (when the 100 day period expires) to February 20, 1987.

The reasons for the delay are as follows: This case is on the agenda for discussion and decision at the next regularly scheduled meeting of the Division of Medical Quality, set for January 29 and 30, 1987. Therefore, the Division needs additional time to meet and complete its work in this case, including time after the meeting to draft and type the appropriate pleading, and to effect service on the parties.

DATED January 13, 1987


KENNETH WAGSTAFF
Executive Director
Board of Medical Quality Assurance

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
JEFFREY MORAN, M.D.)	
220 Fruit Street, Suite 109)	NO. D-3457
Santa Ana, California 92701)	
)	L-36521
Physician's & Surgeon's)	
Certificate No. A-033867)	
)	
Respondent.)	
)	
)	

PROPOSED DECISION

This matter came on for hearing before Frank Britt, Administrative Law Judge of the Office of Administrative Hearings at Santa Ana, California, on September 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, and 29, 1986. Alvin J. Korobkin, Deputy Attorney General, appeared and represented the complainant. Respondent Jeffrey Moran, M.D., appeared in person and was represented by Jose Urcis, Attorney at Law.

At the conclusion of the evidentiary portion of the hearing, complainant's motion was granted to amend certain allegations in the Accusation and to strike subparagraph H at page 3 and the last sentence of subparagraph K at page 4 of the Accusation. Thereafter, the matter was orally argued and submitted. The Administrative Law Judge now finds the following facts:

I

Complainant, Kenneth J. Wagstaff, is the Executive Director of the Board of Medical Quality Assurance and made the Accusation in his official capacity.

II

On May 20, 1979, Jeffrey Moran, M.D. (hereinafter "respondent") was issued physician's and surgeon's certificate No. A-033687 by the Board. Said certificate is currently in full force and effect.

III

A. On September 15, 1981, Barbara D. (hereinafter "patient"), became a psychiatric patient of the respondent.

B. The patient primarily sought psychiatric help from respondent in an effort to ease emotional problems she was experiencing in connection with a seven year relationship with a married man. The patient was resolved to terminate the relationship and felt that psychiatric help was needed.

C. Respondent was recommended to the patient by a licensed psychologist whom the patient had met in her professional capacity as a teacher and co-owner of a private school in Fullerton.

D. The patient's therapy sessions were scheduled for 6:00 p.m., two times per week, to accommodate her work schedule. Respondent's usual fee per session was reduced from \$85 to \$65 after the patient indicated concern about her ability to pay the higher amount. Moreover, as the sessions progressed they were extended from the usual fifty minute session to about one and a half hours without additional costs to the patient.

IV

In November, 1981, the patient's uncle, with whom she had a close and strong relationship, died. The patient was deeply distraught by her uncle's death and at a therapy session with respondent, shortly after the death, she asked respondent if it was all right for her to hug him at the end of the session. He opined that it would be all right. Thereafter, following some therapy sessions, the respondent and the patient did hug each other.

V

A. In January or February, 1982, the respondent and the patient began kissing and hugging each other at the end of many of the therapy sessions. On one occasion the respondent was asked about a bone between the patient's breasts. The respondent looked at the area, and kissed the patient between the breasts.

B. On March 19, 1982, respondent engaged in sexual intercourse with the patient in his office during her therapy session.

C. On April 9, 1982, respondent again engaged in sexual intercourse with the patient in his office during her therapy session.

D. On May 14, 1982, following a therapy session with the patient, respondent walked with the patient to his car. They began kissing each other and the respondent suggested that they return to his office, which she declined to do as she had genital herpes lesions and did not want to transmit the virus to the respondent.

E. In January, 1983, respondent took the patient to a restaurant in Santa Ana following her therapy session. Thereafter, they returned to the respondent's office and remained until 11:00 p.m.

F. On April 22, 1983, respondent took the patient to a restaurant in Santa Ana following her therapy session.

G. On May 10, 1983, the patient suggested to respondent that she take a break from her therapy. The respondent agreed.

H. On May 18, 1983, respondent and the patient had dinner at a restaurant in Santa Ana. The respondent and the patient agreed to terminate her therapy. Afterwards, the patient spent the night in respondent's home where they engaged in sexual intercourse.

The conduct set forth herein in subparagraphs A, B, C, D, and H constitutes gross negligence and an extreme departure from the standards of practice of psychiatry.

The conduct set forth herein at subparagraphs A, B, C, D, and H constitutes incompetence in the practice of psychiatry.

The conduct set forth herein at subparagraphs B, C and H, constitutes sexual misconduct and sexual relations with a patient which is substantially related to the qualifications, functions and duties of a licensed physician and surgeon.

VI

Shortly after the patient started therapy with respondent, she asked him if it was all right to drink wine during therapy sessions. The respondent told her it would probably be all right if it would help her relax. Thereafter, the respondent permitted the patient to bring her own wine and drink it during the psychotherapy sessions. The patient consumed a cup or two of the wine at virtually

every session thereafter. On one occasion the respondent brought a bottle of wine for her use.

The permitting of the patient to consume wine during her psychotherapy sessions constitutes gross negligence and is an extreme departure from the standard of practice of psychiatry.

Permitting the patient to consume wine during the psychotherapy sessions constitutes incompetence in the practice of psychiatry.

VII

During the period of time that the patient was in therapy with the respondent, he disclosed numerous details to her about his own personal life and personal problems, including:

1. An extra-marital sexual affair that he was then having with a young woman.
2. The affect that the extra-marital relationship had on his marriage after he had disclosed it to his wife.
3. The respondent's wife having taken their two children and returning to Guatemala in early 1983, due to marital problems, including the extra-marital affair.
4. That the respondent felt a divorce would result from the separation. However, the wife and children returned in June, 1983, and they reconciled. The reconciliation was conveyed to the patient causing her emotional stress.

The conduct of respondent in disclosing his personal life and problems to his patient constitutes gross negligence and an extreme departure from the practice of psychiatry.

VIII

The above findings of fact were established by clear and convincing evidence, and as except hereinabove found to be true, all other factual allegations of the Accusation are found to have been unproven or surplusage.

IX

Additional evidence was received which established the following facts:

1. The patient, at the time she started therapy with the respondent, was thirty years of age and experiencing some episodes of depression and anxiety. During the period that she was under respondent's care and continuing thereafter, she display some borderline personality traits. None of the traits, however, were of a psychotic nature, nor did she suffer from delusions.

2. The patient is an attractive, well educated and articulate person, who during the transference process of psychotherapy became emotionallly and sexually attracted to the respondent. Such attraction is common and frequently occurs in psychotherapy. Indeed, according to a recent study on the subject, it was reported that ten percent of all therapists have sexual relations with their patients.

3. The patient, at the request of respondent, maintained a diary which recorded her dreams, fantasies and other things or events which came to her mind. The entries would be discussed by the patient and respondent at subsequent therapy sessions. Many of the entries recorded by the patient were of sexual and erotic dreams and fantasies, some of which included the respondent. Other entries were of incidents and happenings at the previous therapy session.

4. The patient expressed her attraction to the respondent and made it clear about her desire to have the sexual relationship with him. The respondent declined many of the patient's sexual overtures to him and explained to her that her attraction for him was due to the normal transference and counter-transference process and that she not consider it as anything other than that.

X

1. Respondent is also licensed as a physician and surgeon in Kansas as well as being Board certified by the American Board of Psychiatry and neurology. He graduated from medical school in Guatemala in 1972. After a residency in Nebraska, he spent three years at the Menninger School of Psychiatry and Neurology in Topeka, Kansas, where he was an assistant professor of psychiatry. Thereafter, he practiced psychiatry for three years at hospitals in Topeka, including the Veterans Administration Hospital, before coming to California in 1979, where he established a psychiatric practice in Orange County. In addition to his practice he has been a consultant with the County of Orange and its Child Guidance Center. He holds staff privileges at the Western Medical Center and the Doctors Hospital of Santa Ana.

2. Respondent has a reputation as an excellent psychiatrist among the many psychologists who frequently refer patients to him.

3. The respondent speaks fluent Spanish. Between thirty-five and forty-five percent of the respondent's patients speak only Spanish which necessitates their therapy sessions to be conducted in that language.

4. Respondent did resist many of the sexual advances made by the patient and told her that any sexual relationship between them would be destructive to her therapy. However, respondent did succumb to his sexual desires to the detriment of the patient. Since October, 1983, the patient has continued psychotherapy with another psychiatrist. The patient is expected to continue in therapy for another two years.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Causes exist to suspend or revoke respondent's certificate pursuant to Sections 2220, 2227 and 2234 of the Business and Professions Code in that he has committed acts constituting unprofessional conduct, as follows:

1. Pursuant to Section 2234(b) of said code by reason of his gross negligences set forth in Findings V, VI, and VII.
2. Pursuant to Section 2234(d) of said code by reason of his incompetence as set forth in Findings V and VI.
3. Pursuant to Section 726 of said code by reason of his sexual misconduct and relations as set forth in Findings V.

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The physician's and surgeon's certificate number A-033867, heretofore issued to respondent by the Board, is hereby revoked; provided, however, execution of this order of revocation is hereby stayed and respondent is placed on probation for a period of seven (7) years upon the following terms and conditions:

1. Respondent shall comply with all laws of the United States, the State of California and its political

subdivisions, and all rules and regulations of the Board of Medical Quality Assurance of the State of California.

2. Respondent shall report in person to the Division of Medical Quality or its agents or medical consultants at such meetings or interviews as may be directed during the period of probation.

3. Respondent shall submit to the Division of Medical Quality, at quarterly intervals, a declaration under penalty of perjury on forms provided by the Division, to the effect that he is fully and faithfully complying with all the terms and conditions of this probation. The first report shall be due when ordered by the Executive Director.

4. Respondent shall comply with the Division's probation surveillance program. In connection therewith, respondent shall make himself and/or any facility over which he has cognizance available for inspection by authorized representatives of the Division at any time for the purpose of verifying respondent's compliance with the terms of his probation.

5. In the event respondent should leave California to reside or to practice outside the State, respondent shall immediately notify the Division, in writing, of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

6. Respondent shall not engage in solo practice. Within thirty (30) days of the effective date of this Order, respondent shall submit to the Division or its designee, and subject to prior approval, a plan of practice limited to a structured environment in which respondent's activities will be overseen and supervised by another physician.

7. Within ninety (90) days of the effective date of this decision, respondent shall submit to the Division for its prior approval an education program related to psychiatry, and which shall not be less than 40 hours. This program shall be in addition to the Continuing Medical Education requirements for re-licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Said courses shall be completed within one (1) year of the date of approval of said program, by the Division.

Upon full compliance with the terms and conditions herein set forth and upon the expiration of the probationary

period, the certificate shall be restored to its full privileges; provided, however, that in the event respondent violates or fails to comply with any of the terms and conditions hereof, the Division of Medical Quality, after notice to respondent and opportunity to be heard, may terminate this probation and reinstitute the revocation or make such other order modifying the terms of probation herein as it deems just and reasonable in its discretion.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on the above dates, at Santa Ana, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance.

DATED: 10-20-86



FRANK BRITT
Administrative Law Judge
Office of Administrative Hearings

FB:mh